



Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007

Robert R. Corbin

February 16, 1983

Mr. John Hestand
Deputy County Attorney
Office of the County Attorney
Pinal County
Florence, AZ 85232

Re: I83-013 (R82-145)

Dear Mr. Hestand:

We have reviewed your opinion dated September 10, 1982, to the Superintendent of the Santa Cruz Valley Union High School District concerning a proposed residency requirement for district employees. We revise your opinion as follows:

A school district has only the authority granted it by the legislature and this authority must be exercised in the mode and within the limit permitted by statute. School District No. 69 of Maricopa County v. Altherr, 10 Ariz. App. 333, 458 P.2d 537 (1969); School District No. One of Pima County v. Lohr, 17 Ariz. App. 438, 498 P.2d 512 (1972).

Our statutes do not expressly grant school districts the authority to impose residency requirements. While some specific powers may be implied from general grants of authority, we do not believe such is the case for the type of substantial policy decision involved here. Therefore, the imposition of such a requirement by a school district would be unlawful.^{1/}

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Corbin".

BOB CORBIN
Attorney General

BC/VBW/kb

1. In light of this disposition, we disapprove anything to the contrary in Atty. Gen. Op. No. 65-5-C.

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PINAL COUNTY ATTORNEY

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P. O. BOX 837

September 10, 1982

EDUCATION OPINION

ISSUE NO LATER THAN

11-10-82

Dr. Ronald Starcher, Superintendent
Santa Cruz Valley Union High School
District 840
P.O. Box 848
Eloy, Arizona 85231

9-15-82 pc
WHITEHEAD
R82-145

Dear Doctor Starcher:

You requested a County Attorney's opinion.

QUESTION: May the District adopt a residency requirement
for district employees?

ANSWER: Yes. See body of opinion.

OPINION: The Governing Board has requested an opinion
concerning the following proposed policy.

"Residency Requirement - All Staff Members

As a condition of employment, all employees
hired or promoted after January 1, 1983, must
agree to establish residence within the bound-
aries of District #840. Employees shall be
granted a maximum of 120 days to comply with
this policy. Employees who accept employment
under this policy are expected to maintain
their residence within the District. Subse-
quent change of residence (outside of the Dis-
trict) will be considered a violation of this
policy and employment with the District will
be terminated at the end of the school year
during which the relocation takes place."

First, consider the general issue of whether a school
district may require residence within the boundaries of
the district. This was discussed by the Pinal County
Attorney on November 10, 1964. That opinion was con-
curred in by the Attorney General in concurring opinion
65-5-C dated December 4, 1964. The Pinal County Attorney
stated: "In the opinion of this office a regulation
requiring teachers to reside within the boundaries of

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the school district during the school year is a reasonable regulation and can be enforced by the school district."

In that opinion, the then Pinal County Attorney quoted from the Supreme Court of Pennsylvania in Jones v. School District of Boroughs of Kulpmont, 3A2d 914, 915:

"In the absence of a specific constitutional or statutory provision, or a valid regulation on the part of the employing body, there is no general requirement in the law that public employees reside within the territory of the governmental body employing them. However, a school board may adopt such reasonable rules and regulations as it deems proper in managing its affairs and the conduct of teachers, and, because of the nature of a teacher's work and the necessity to be near pupils and parents, a board regulation requiring teachers to be residents would be a reasonable requirement.

...."

This office has found no Arizona case law concerning residency requirements. However, such requirements are common among Arizona governmental entities. Recent Federal case law indicates that residency requirements are permissible. In Mogle v. Sevier County School District, 540 F.2d 478 (1976), the United States District Court for the Tenth Circuit concerned a case in which a Utah school district imposed a residency requirement and was sued under 42 U.S.C.A. §1983 and 1985. The plaintiff alleged that he was unconstitutionally deprived of employment. He alleged that the equal protection clause was violated.

The Court found that under the traditional standard of review for the equal protection clause, there must be at a minimum some rational relationship between the rule and a legitimate state purpose and that the rule would be set aside "only if no grounds can be concerned to justify (it)." 540 F.2d 484.

The District is applying the policy prospectively to new employees and thus avoids any problems concerning tenure. The district may make residence a condition of promotion for current employees. A note should

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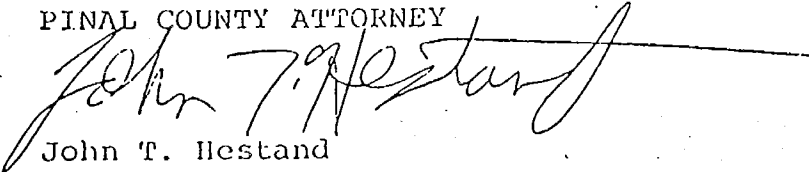
be made that the granting of a fourth consecutive contract, and the resulting tenure, is not a promotion.

If an individual is a nine or ten month employee, the district would, of course, not require them to maintain residence during the months in which classes are not being conducted.

Should you have any additional questions, please do not hesitate to call.

Sincerely,

ROY A. MENDOZA
PINAL COUNTY ATTORNEY


John T. Hestand
Deputy County Attorney

JTH/mlh